DRAFT/GMStewart/17 Oct 58

GEHLEN BRIEFING - 22 OCTOBER 1958

I am asked to discuss the special legislation concerning CIA which would also be recommended to insure the effectiveness of the German Intelligence Service. With your indulgence, I shall not restrict myself to the relatively few provisions in the National Security Act of 1947 and the Central Intelligence Act of 1949 which bear on personnel administration. The desirable elements in the legal framework in which we operate are by no means restricted to these few paragraphs. The Director of Central Intelligence, as head of a federal agency, enjoys broad powers and profits by a system of legislation which provides great support to the work that he has to do. The special provisions which have been drawn up for CIA use are in a sense exceptions to limitations which have been placed on the chiefs of departments and agencies in this government over the years. I shall speak more to this point later.

In introducing my subject, I should like to propose that there are two elements ~~in law~~ which are essential to the personnel management of an intelligence agency. The first is the power of discretion, that is the power to exercise free decision, individual judgment or free choice unhampered by administrative or judicial review. The second is the power to control, which is the power to direct, guide, restrain and reward personnel assigned to the agency.

The head of an intelligence agency, working within the framework of a democratic and republican government such as we have, would not expect to enjoy these powers to an unlimited degree. In the first place, he is saddled with

certain responsibilities which necessarily have a direct bearing on the way in which he exercises the freedom which is given to him. Among these are: (a) the responsibility to protect official secrets, (b) the responsibility to administer the personnel in his agency in accordance with established standards of justice and fair play and (c) the responsibility to spend the monies given to him economically.

Within these broad limitations, the Director of Central Intelligence derives wide powers of discretion and control from three sources: those which devolve on the heads of independent offices and establishments in our government, those which are specifically granted to departments and agencies that place personnel overseas and, finally, those that have specifically been written into law to apply to the Central Intelligence Agency only.

Let us begin with a review of the authorities the Director has as head of a federal agency. These have their origin in the Constitution.

The American Civil Service sometimes described as the battleground in the struggle for power between the President and the Congress. Our Constitution was devised in such a way as to insure that one branch of the government would not wrest away a disproportionate share of power from the other branches. In order to prevent the President from using his power to make appointments to build a personl political machine that would enable him to overwhelm the legislative branch, the Constitution located in the Senate the function of confirming appointments of ambassadors, ministers, consuls, Federal judges and all high executive personnel. For all other personnel in the executive branch, the Constitution authorized the Congress to place the appointing power in the President alone, in the federal courts or in the heads of the separate departments. In the early nineteenth century, it became common practice for each

new administration to fire most of the key employees who had served before and to hire into these positions members of their own party. It was believed that government operations were of such a simple nature that any man who could read and write could fulfill the duties of almost any position. It was also believed that a turnover of personnel in the various departments in Washington had the healthy effect of keeping the populace in touch with government and of preventing entrenched interests from becoming established at the seat of power. The American citizen of the early nineteenth century took pride in his system of free democracy and regarded the governments in Petersburg, Vienna, Berlin and London as petrified bureaucracies. After the Civil War and in recognition of the growing complexities of government and the ill effects of the spoils system, Congress undertook to limit the powers which it had generously granted to department and agency heads. In 1883 Congress passed the Civil Service Act. Under this act the President was empowered to determine which agencies of the government were to be required to appoint personnel according to civil service examination procedures. A Civil Service Commission was established to conduct nation-wide examinations of applicants for vacant positions in the departments which the President decided should be placed under the Civil Service Act. The Federal courts had already ruled that since the appointing power was located with the department heads, no outside group such as the Civil Service Commission could dictate the particular individual who would be appointed in a department. However, it was considered appropriate to define limitations on how the appointing power is exercised; thus, it was determined that a body such as the Civil Service Commission could be designated by the Congress to hold competitive examinations and to refer to a department head the three or four highest candidates whose names appeared on the roster of passing applicants at the time it was desired to fill a position.

This had the effect of limiting the power of discretion of an agency head.

In 1912 Congress imposed the first restrictions that were ever imposed on the authority of a department head to fire an employee, [illegible]

As the result of two world wars and the very powerful influence of veterans organizations, Congress has further restricted the authority of heads of departments and agencies with regard to the termination or downgrading of veterans.

Finally, Congress dictates the pay that will be given to every federal employee from the President down, with the exception of certain laborers & craftsmen. This is done in two general ways. From time to time the Congress passes an Executive Pay Act which establishes salaries of all senior executives in the Government including the President. It also from time to time revises what is known as the Classification Act in which the principles of job classification are set forth and the General Schedule of pay is specified. It is important to understand the relationship between the salaries set forth in these two types of legislation and the salaries that Congress pays to itself. Congress does not dare to increase the salaries of Senators and Congressmen [illegible] above a level that would be generally acceptable to the public. This is our point of departure in the consideration of salary levels in our government. Once it is established what these are ($22,500 — Speaker gets $35,000). [illegible] and with this knowledge in the backs of their minds, Congress then sets up the salaries for executives. When these two levels are taken care of, the upper limit of the General Schedule can be set and the salaries for the 18 grades in this schedule are then worked out.

Salaries for military officers, officers of the Foreign Service Corps and other commissioned officers of the government are related to these various pay systems.

We have briefly reviewed the powers that the Director enjoys as the head of a federal agency and have touched on the legislation which has been passed over the last 80 years and which has the effect of limiting these powers. Now, very briefly, let me describe the authorities which we use as an Agency which places personnel overseas. I shall use the post differential as my example. Post differential is a payment made to government employees assigned to posts involving extraordinarily difficult living conditions, excessive physical hardship or notably unhealthy conditions. Part I of Executive Order No. 10,000 delegates to the Secretary of State the authority vested in the President to designate places, fix rates and prescribe further regulations governing the payment of additional compensation to be known as foreign post differential to employees in foreign areas of executive departments and independent establishments of the United States government. In addition to this specific allowance there are dozens of others pertaining to the cost of housing, the transportation of an employee's possessions overseas, the provision of allowances for education of employees' children and medical care. As a generalization allow me to say that, although there have been written into CIA law certain specific provisions in the field of medical care, these benefits have been extended to other persons serving overseas and it is becoming our common practice to treat our people very much as others are treated. We feel that this is entirely adequate.

Now let me turn to the specific provisions that have been written into law in support of our organization.

We are exempted from the provisions of the Civil Service Act. This means that the Director may hire in staff status anyone who meets the federal standards of security for appointment to a sensitive position and

who meets those established by the Director himself. He does not draw his candidates from Civil Service rosters and the Civil Service Commission does not know the names of the persons he hires. He is, thus, free to exercise discretion in the assembling of his staff.

Secondly, the Director can remove any employee from the Agency without reference to any other authority in the government. His authority to do this is contained in Section 102 (c) of the National Security Act of 1947.

> "Notwithstanding the provisions of section 6 of the Act of August 24, 1912 (37 Stat. 555), or the provisions of any other law, the Director of Central Intelligency may, in his discretion, terminate the employment of any officer or employee of the Agency whenever he shall deem such termination necessary or advisable in the interests of the United States, but such termination shall not affect the right of such officer or employee to seek or accept employment in any other department or agency of the government if declared eligible for such employment by the United States Civil Service Commission.
>
> This section provides that irrespective of all statutes governing the termination of federal employment, the Director of Central Intelligence may terminate the employment of any employee with CIA whenever in his discretion he determines it to be necessary in the national interest. Termination in such manner does not affect the right of such employee to seek employment elsewhere in the Federal Government if the Civil Service Commission declares him eligible therefor. "

Third, the Director may establish the rate of pay for any position in the Agency except his own and that of the Deputy Director (which are included in the Executive Pay Act) as he sees fit. To put it in a different way, CIA is excluded from the provisions of the Classification Act of 1949.

Now I think it is important to say a word about our practices in this regard. CIA makes use of the principles of job classification as set forth in the Classification Act of 1949 and as elaborated by the Civil Service Commission in establishing the pay for all positions which are ~~easily~~ directly comparable with positions that exist elsewhere in government. Secretaries, accountants, draftsmen, warehousemen and the like ~~are easily compared~~. Furthermore, CIA classifies the positions of intelligence officers as a result of careful study of the pay granted to persons doing more or less comparable work elsewhere in the government: economic analysts, scientists, statisticians, foreign service officers and the like. CIA uses the General Schedule rates of pay as established by the Classification Act. It does so voluntarily.

In its expenditure of money for personnel costs, CIA is subject to review by two important authorities. The Comptroller General is head of the General Accounting Office. This agency is an arm of Congress established to keep a continuing check on the executive departments to determine whether federal funds are spent in the way that Congress intended when it appropriated the funds. Those functions of CIA which are considered common to all federal agencies fall under the cognizance of the Comptroller General. For example, members of the General Accounting Office regularly audit payroll expenditures for regular CIA personnel stationed in the United States. To the extent that the Agency pays salaries and expends money on personnel services overseas, the only review that is made is by the Agency's own Audit Staff.

The Bureau of the Budget, which undertakes its reviews on behalf of the President, concerns itself with numbers of full staff employees and average grade. Although it subjects the Agency to very stern inquiry, it does not in any way limit the Director's authority to pay salaries as he sees fit.

Finally, there is one type of legislation which we do not have and which we seek. That is early retirement legislation. We are at present authorized to separate people who do not meet Agency standards. There are, however, men and women on duty in CIA who began their work in intelligence during the Second World War or shortly thereafter and who sometime in the next ten years for one reason or other will have become excess to our needs. At that time they will be in their fifties. CIA has no way of providing for a retirement annuity except as it is provided for all government employees under general legislation which is administered by the Civil Service Commission. Normally, an employee with 20 years or more service can retire at age 62. I have a chart here which shows the rate of his entire retirement income. If the employee wishes to work until he is 70, he may do so unless he is removed for cause by the Agency. Seventy is the age of mandatory retirement in this government. We want legislation which will permit us to retire our people at age 50 with 20 years of government service, 10 years of which have been spent overseas. We are asking that such personnel be paid an annuity based on two percent of their high five years multiplied by the number of years of service. Thus, for example, a man who has been paid, let us say, $10,000 a year for his high five years and who has worked for thirty years when he is retired will receive $6,000 per year annuity. This is not easy to get. We are asking the Civil Service Retirement Fund to pay $72,000 to that man over a period of 12 years in addition to the annuity that he will draw for the number of years that he lives past age 62.